

(f) *Continuous Evaluation.* All personnel in national security positions shall be subject to continuous evaluation.

(g) *Financial Disclosure.* DoD Component implementation of the electronic financial disclosure requirement, consistent with E.O. 12968, shall be completed by the end of calendar year 2012.

(h) *Reciprocal Acceptance of Eligibility Determinations.* (1) DoD reciprocally accepts existing national security eligibility determinations or clearances from other government agencies in accordance with E.O. 13467, OMB Memorandums "Reciprocal Recognition of Existing Personnel Security Clearances" dated December 12, 2005 (Copies available on the Internet at <http://www.whitehouse.gov/omb>) and July 17, 2006 (Copies available on the Internet at <http://www.whitehouse.gov/omb>).

(2) Reciprocity for SCI eligibility shall be executed in accordance with ICD 704 and associated Director of National Intelligence guidance.

(3) Personnel who have been determined eligible for national security positions should not be subjected to additional security reviews, completion of a new security questionnaire, or initiation of a new investigative check, unless credible derogatory information that was not previously adjudicated becomes known, or the previous adjudication was granted by a condition, deviation, or waiver pursuant the provisions of OMB Memorandums "Reciprocal Recognition of Existing Personnel Security Clearances" dated December 12, 2005, or there has been a break in service of more than 24 months. Exceptions for access to SCI or special access programs are listed in the OMB Memorandums "Reciprocal Recognition of Existing Personnel Security Clearances" dated July 17, 2006.

(i) *National Security Agency (NSA)/Central Security Service (CSS).* Employees, contractors, military assignees, and others with similar affiliations with the NSA/CSS must maintain SCI eligibility for access to sensitive cryptologic information in accordance with 50 U.S.C. chapter 23.

(j) *Wounded Warrior Security and Intelligence Internship Program.* PSIs in support of wounded warriors may be submitted and processed regardless of

the time remaining in military service. Investigations will be accelerated through a special program code established by the Office of the USD(I) to ensure expedited service by the investigating and adjudicating agencies.

(1) Category 2 wounded, ill, or injured uniformed service personnel who expect to be separated with a medical disability rating of 30 percent or greater may submit a PSI for Top Secret clearance with SCI eligibility prior to medical separation provided they are serving in or have been nominated for a wounded warrior internship program.

(2) The investigations will be funded by the DoD Component that is offering the internship. If the DoD Component does not have funds available, the Military Service in which the uniform service personnel served may choose to fund the investigation.

§ 156.6 Common access card (CAC) investigation and adjudication.

(a) *General.* Individuals entrusted with access to Federal property, information systems, and any other information bearing on national security must not put the Government at risk or provide an avenue for terrorism.

(1) All individuals requiring a CAC must meet credentialing standards of OPM Memorandum, "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12." For those individuals who are subject to an interim credentialing decision before a security, suitability, or equivalent adjudication is completed, the OPM credentialing standards will be the basis for issuing or denying a CAC. The subsequent credentialing decision will be made upon receipt of the completed investigation from the ISP.

(2) If an individual is found unsuitable for employment in a covered position under 5 CFR 731.101, ineligible for access to classified information under E.O. 12968, or disqualified from appointment in the excepted service or from working on a contract, the unfavorable decision is a sufficient basis for non-issuance or revocation of a CAC, but does not necessarily mandate this result.

(b) *Investigation.* A favorably adjudicated National Agency Check with

Inquiries (NACI) is the minimum investigation required for a final credentialing determination for CAC.

(1) An interim credentialing determination can be made based on the results of a completed National Agency Check or an Federal Bureau of Investigation National Criminal History Check (fingerprint check), and submission of a request for investigation (NACI or greater).

(2) Individuals identified as having a favorably adjudicated investigation on record, equivalent to (or greater than) the NACI do not require an additional investigation for CAC issuance.

(3) There is no requirement to re-investigate CAC holders unless they are subject to reinvestigation for national security or suitability reasons as specified in applicable DoD issuances.

(4) Existing CAC holders without the requisite background investigation on record must be investigated in accordance with OMB Memorandum M–05–24, “Implementation of Homeland Security Presidential Directive (HSPD) 12—Policy for a Common Identification Standard for Federal Employees and Contractors,” dated August 5, 2005.

(c) *Adjudication.* The ultimate determination whether to authorize CAC issuance or revoke the CAC must be an overall common-sense judgment after careful consideration of the basic and, if applicable, supplemental credentialing standards in OPM Memorandum, “Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD–12,” each of which is to be evaluated in the context of the whole person. These standards shall be evaluated to determine if there is a reasonable basis to believe that issuing a CAC to the individual poses an unacceptable risk.

(1) Each case is unique and must be judged on its own merits. To the extent pertinent to the individual case, when evaluating the conduct, the adjudicator should consider: the nature and seriousness of the conduct, the circumstances surrounding the conduct, the recency and frequency of the conduct, the individual’s age and maturity at the time of the conduct, contributing external conditions, and the pres-

ence or absence of rehabilitation or efforts toward rehabilitation.

(2) Final credentialing standards are:

(i) *Basic Credentialing Standards.* All CAC adjudications must apply the basic credentialing standards. CAC shall not be issued when a disqualifying factor cannot be mitigated.

(ii) *Supplemental Credentialing Standards.* The supplemental credentialing standards, in addition to the basic credentialing standards, shall apply generally to individuals who are not subject to adjudication for eligibility for a sensitive position or access to classified information, suitability for Federal employment or fitness. These standards may be applied based on the risk associated with the position or work on the contract.

(3) All interim and final adjudicative determinations shall be made by cleared and trained Federal Government personnel. Automated adjudicative processes shall be used to the maximum extent practicable.

(4) Adjudication decisions of CAC investigations shall be incorporated into the Consolidated Central Adjudication Facility as directed by the Deputy Secretary of Defense.

(5) CAC adjudicators must successfully complete formal training through a DoD adjudicator course from the DSS Center for Development of Security Excellence to achieve maximum consistency and fairness of decisions rendered.

(6) Federal Government credentialing standards do not prohibit employment of convicted felons who have been released from correctional institutions, absent other issues, if they have demonstrated clear evidence of rehabilitation.

(d) *Appeals.* CAC applicants or holders may appeal CAC denial or revocation.

(1) No separate administrative appeal process is allowed when an individual has been denied a CAC as a result of a negative suitability determination under 5 CFR Part 731, an applicable decision to deny or revoke a security clearance, or based on the results of a determination to disqualify the person from an appointment in an excepted service position or from working on a

contract for reasons other than eligibility for a Federal Credential as described in OPM Memorandum, "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12." If a later denial or revocation of a CAC results from an applicable denial or revocation of a security clearance, suitability decision, or other action for which administrative process was already provided on grounds that support denial or revocation of a CAC, no separate appeal for CAC denial or revocation is allowed.

(2) Initial civilian and contractor applicants who have been denied a CAC, and for whom an appeal is allowed under this paragraph, may elect to appeal to a three member board containing no more than one security representative from the sponsoring activity.

(3) Contractor employees who have had their CAC revoked, and for whom an appeal is allowed under this paragraph, may appeal to DOHA under the established administrative process set out in 32 CFR Part 155.

(4) Decisions following appeal are final.

(5) Individuals whose CACs have been denied or revoked are eligible for reconsideration 1 year after the date of final denial or revocation, provided the sponsoring activity supports reconsideration. Individuals with a statutory or regulatory bar are not eligible for reconsideration while under debarment.

(e) *Foreign Nationals.* Special considerations for conducting background investigations of non-U.S. nationals (foreign nationals) are addressed in OPM Memorandum, "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12." The following criteria shall be met prior to CAC issuance to foreign nationals:

(1) The background investigation must be completed and favorably adjudicated before issuing CACs to foreign nationals.

(2) Foreign nationals are not eligible to receive CAC on an interim basis.

(3) At foreign locations:

(i) Foreign national background investigations may vary based on standing reciprocity treaties concerning identity assurance and information ex-

change that exist between the United States and its allies. This includes foreign military, civilian, or contract support with a visit status and security assurance that has been confirmed, documented, and processed in accordance with USD(P) policy.

(ii) The type of background investigation may also vary based upon agency agreements with the host country when the foreign national CAC applicant (such as a DoD direct or indirect hire) has not resided in the United States for at least 3 of the past 5 years or is residing in a foreign country. The investigation must be consistent with NACI, to the extent possible, and include a fingerprint check against the Federal Bureau of Investigation (FBI) criminal history database, an FBI Investigations Files (name check) search, and a name check against the Terrorist Screening Database.

(4) At U.S.-based locations and in U.S. territories:

(i) Foreign nationals who have resided in the United States or U.S. territory for 3 years or more must have a NACI or greater investigation.

(ii) Components may delay the background investigation of foreign nationals who have resided in the U.S. or U.S. territory for less than 3 years until the individual has been in the U.S. or U.S. territory for 3 years. When the investigation is delayed, the Component may, in lieu of a CAC, issue an alternative facility access credential at the discretion of the relevant Component official based on a risk determination.

(f) *Recording Final Adjudication.* Immediately following final adjudication, the sponsoring activity shall record the final eligibility determination (active, revoked, denied, etc.) in the OPM Central Verification System as directed by OPM Memorandum, "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12," and maintain local records for posting in a DoD repository when available.

(g) *Reciprocity of CAC Determinations.* (1) The sponsoring activity shall not re-adjudicate CAC determinations for individuals transferring from another Federal department or agency, provided:

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(i) Possession of a valid personal identity verification (PIV) card or CAC can be verified by the individual's former department or agency.

(ii) The individual has undergone the required NACI or other equivalent suitability, public trust, or national security investigation and received favorable adjudication from the former agency.

(iii) There is no break in service greater than 24 months and the individual has no actionable information since the date of the last completed investigation.

(2) Interim CAC determinations are not eligible to be transferred or reciprocally accepted. Reciprocity shall be based on final favorable adjudication only.

§ 156.7 Definitions.

These terms and their definitions are for the purposes of this part:

Continuous evaluation. Defined in section 1.3(d) of E.O. 13467.

Contractor. Defined in E.O. 13467.

Employee. Defined in E.O. 12968, as amended.

Limited access authorization. Defined in 32 CFR Part 154.

National security position. (1) Any position in a department or agency, the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security.

(i) Such positions include those requiring eligibility for access to classified information.

(ii) Other such positions include, but are not limited to, those whose duties include:

(A) Protecting the nation, its citizens and residents from acts of terrorism, espionage, or foreign aggression, including those positions where the occupant's duties involve protecting the nation's borders, ports, critical infrastructure or key resources, and where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security;

(B) Developing defense plans or policies;

(C) Planning or conducting intelligence or counterintelligence activities, counterterrorism activities and related activities concerned with the

preservation of the military strength of the United States;

(D) Protecting or controlling access to facilities or information systems where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security;

(E) Controlling, maintaining custody, safeguarding, or disposing of hazardous materials, arms, ammunition or explosives, where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security;

(F) Exercising investigative or adjudicative duties related to national security, suitability, fitness or identity credentialing, where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security;

(G) Exercising duties related to criminal justice, public safety or law enforcement, where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security; or

(H) Conducting investigations or audits related to the functions described in paragraphs (1)(ii)(B) through (G) of this definition, where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security.

(2) The requirements of this part apply to positions in the competitive service, positions in the excepted service where the incumbent can be non-competitively converted to the competitive service, and career appointments in the Senior Executive Service within the executive branch. Departments and agencies may apply the requirements of this part to other excepted service positions within the executive branch and contractor positions, to the extent consistent with law.

Unacceptable risk. Threat to the life, safety, or health of employees, contractors, vendors, or visitors; to the Government's physical assets or information systems; to personal property; to records, privileged, proprietary, financial, or medical records; or to the privacy of data subjects, which will not be tolerated by the Government.